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EXAMINER

NGUYEN, QUANG N

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/650,729

Filing Date: August 30, 2000

Appellant(s): Peter J. Churchyard et al.

Kevin J. Zilka

For Appellant

Examiner's Answer

This is in response to the appeal brief filed 06/21/2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

A statement that claims of the following groups of claims should not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8) is contained in the brief.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal:

- Applicant Admitted Prior Art (AAPA).
- Feldman et al. (6,130,889) issued on 10/10/2000.
- Kloth (6,598,034) issued on 07/22/2003.
- Ji et al. (5,623,600) issued on 04/22/1997.
- Hair (6,615,349) issued on 09/02/2003.

- Takaragi et al. (6,341,349) issued on 01/22/2002.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-16 are presented for examination.
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-2 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted Prior Art, herein after referred as AAPA, in view of Feldman et al. (6,130,889), herein after referred as Feldman.**

4. As per Claim 1, AAPA discloses a method of maintaining a data communications protocol session, the method comprising the steps of:

 sending a request from a client 130 to a server 140 over a data communications network 190 (AAPA, Fig. 1, page 1, line 13 – page 2, line 2);

 receiving said request in said server 140 (AAPA, Fig. 1, pg. 1, lines 13-24);

sending a response to said request from said server 140 to said client 130 over said data communications network 190 (AAPA, Fig. 1, page 1, line 13 – page 2, line 2);

receiving said response in an agent (*agents such as proxies 110 and 160; and firewalls 120 and 150*) (AAPA, Fig. 1, pg. 1, lines 19-20);

sending said response from said agent 110 to said client 130 (AAPA, Fig. 1, page 1, line 13 – page 2, line 2);

receiving said response in said client 130 (AAPA, Fig. 1, pg. 1, lines 13-24);

However, the AAPA does not explicitly teach the steps of determining if illusory content needs to be sent prior to sending said response; performing processing in said agent as a result of said response; and if illusory content needs to be sent during said processing, sending one or more messages containing illusory content from said agent to said client, wherein said one or more messages containing said illusory content is sent for preventing a time out operation as a result of security processing.

In the related art, Feldman teaches Integrated Switch Router “ISR” (*here ISR could be given a broad and reasonable interpretation as an agent*) sends one or more “VC KeepAlive” messages (*i.e., sending one or more messages containing illusory content*) to inform its neighbor (*client*) of its continued existence. In order to prevent a neighbor timeout period from expiring (*i.e., determining if illusory content messages need to be sent*), ISR periodically sends or forwards the “VC KeepAlive” messages to neighbors for preventing the neighbor timeout period from expiring in the event when no other protocol messages have been transmitted (*i.e., when no response protocol*

messages have been sent to the client) within the periodic interval time (Feldman, col. 7, lines 25-31).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the AAPA method of maintaining data communications to include determining if illusory content needs to be sent during said processing, sending one or more messages containing illusory content from said agent to said client (*i.e., sending one or more "VC KeepAlive" messages to a neighbor for preventing a timeout operation*), as taught by Feldman, for the purpose of preventing a neighbor timeout period from expiring in the event when no other protocol messages have been transmitted within the periodic interval time (Feldman, col. 7, lines 25-31).

5. Claims 2 and 15-16 are corresponding method, computer readable medium and system claims of claim 1; therefore, they are rejected under the same rationale.

6. As per Claim 13, AAPA in view of Feldman discloses the method of claim 2, and AAPA further discloses wherein said data communications protocol session further comprises an HTTP session, wherein the well known HTTP (*which could be used to carry a HTLM session*), as described in RFC 2616 can provide the ability for communications to occur between clients and servers using the WWW (AAPA, pg. 2, lines 1-12). **Note:** *Examiner assumes applicant intended HTTP, not HTML, as the context of the claim is in regard to a protocol, not a language.*

7. As per Claim 14, AAPA in view of Feldman discloses the method of claim 13, and further discloses wherein said step of sending one or more messages containing illusory content (*i.e., sending one or more "VC KeepAlive" messages to its neighbors*) further comprises the steps of: creating a copy of said response (*i.e., creating "VC KeepAlive messages"*); modifying said copy of said response by inserting an entity-header (*according to RFC 2616, "http://www.faqs.org/rfcs/rfc2616.html", in sections 4.2, 4.5 and 7.1, header fields may also be modified, extended to allow for additional entity-header fields defining meta-information about the entity-body or, if no body is present*); and transmitting said modified response said client (*i.e., transmitted the VC KeepAlive message to client*) (AAPA, pg. 2, lines 1-12).

8. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA, in view of Feldman et al (6,130,889), as applied to claim 2 above, and further in view of Kloth (6,598,034).

9. As per Claim 3, AAPA in view of Feldman discloses the method of claim 2, but does not explicitly teach said step of receiving a response further comprises receiving a file.

In the related art, Kloth discloses HTTP is used to transfer displayable web pages and related files between computing devices over the Internet (*i.e., the received response that client 130 receives from the server 140 could be web pages or related files*) (Kloth, col. 11, lines 1-5).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the AAPA in view of Feldman method of maintaining communications to include wherein said step of receiving a response further comprises receiving a file, as taught by Kloth, for the purpose of exchanging files between computers on the Internet (Kloth, col. 11, lines 1-3).

10. As per Claims 4-5, AAPA in view of Feldman, and further in view of Kloth discloses the method of claim 3, and Kloth further discloses wherein said file further comprises a computer program (Kloth, col. 11, lines 9-11) and wherein said file further comprises a document (Kloth, web page - col. 11, line 7).

11. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA, in view of Feldman et al (6,130,889), as applied to claim 2 above, and further in view of Ji et al. (5,623,600).

12. As per Claim 6, AAPA in view of Feldman discloses the method of claim 2, but does not explicitly teach said step of performing processing further comprises searching a file.

In the related art, Ji teaches a method and system for virus detection and removal for computer networks comprising processing a file at a gateway node before transmission into and/or from the network, wherein said step of performing processing

further comprises searching a file (Ji, col. 5, lines 30-38) for the purpose of detecting viruses in file transfers (Ji, col. 4, lines 63-67).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the AAPA in view of Feldman method of maintaining communications to include wherein said step of performing processing further comprises searching a file, as taught by Ji, for the purpose of detecting and eliminating viruses in file transfers at a gateway before transmission into or/and from the network in order to provide and maintain a virus-free network environment (Ji, C4:L63 – C5:L38).

13. As per Claim 7, AAPA in view of Feldman, and further in view of Ji discloses the method of claim 6, and Ji further discloses wherein said step of searching a file further comprises scanning said file for one or more computer viruses (Ji, C4:L63 – C5:L38).

14. As per Claim 8, AAPA in view of Feldman, and further in view of Ji discloses the method of claim 6, and Ji further discloses wherein said step of searching a file further comprises scanning for one or more text phrases (Ji, C2: L1-5).

15. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA, in view of Feldman et al (6,130,889), as applied to claim 2 above, and further in view of Hair (6,615,349).

16. As per Claims 9-10, AAPA in view of Feldman discloses the method of claim 2, but does not explicitly teach said step of performing processing further comprises encrypting a file and decrypting a file.

In the related art, Hair teaches a system for manipulating, encrypting a file or decrypting a file (Hair, C4:L63 - C5:L18) for the purpose of improved secure transmission of files over the Internet (Hair, C1: L15-17).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the AAPA in view of Feldman method of maintaining communications to include further comprising encrypting a file or decrypting a file, as taught by Hair, for the purpose of improved secure transmission of files over the Internet to protect against piracy or illegal use of protected private and/or personal information (Hair, C1: L15-17).

17. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA, in view of Feldman et al (6,130,889), as applied to claim 2 above, and further in view of Takaragi et al (6,615,349).

18. As per Claims 11-12, AAPA in view of Feldman discloses the method of claim 2, but does not explicitly teach said step of performing processing further comprises creating a public key digital signature and verifying a public key digital signature.

In the related art, Takaragi teaches creating a public key digital signature or verifying a public key digital signature (Takaragi, col. 4, lines 19-24) for the purpose of securing the security of a computer network (Takaragi, col. 1, lines 5-8).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the AAPA in view of Feldman method of maintaining communications to include further comprising creating a public key digital signature and verifying a public key digital signature, as taught by Takaragi et al, for the purpose of securing/improving the security of a computer network to protect against piracy or illegal use of protected private and/or personal information (Takaragi, C1: L5-8).

(11) Response to Arguments

In the remarks, applicant argued in substance that

(A) Prior Art references, when combined, fail to teach or suggest all the claim limitations of independent claims 1-2 and 15-16.

As to point (A), Examiner submits the rejection of claim 1 in the paragraph 4 above.

(B) Examiner relies, at least in part, on appellant's admitted prior art (AAPA) to meet appellant's claimed, is not a "teaching" or "admitted prior art", but rather a statement of the problem solved by appellant.

As to point (B), Examiner submits the information (*which is contained in the "Description of the Related Art" under the "Background" of the invention section*) that the Examiner relies on such as *"a client communicates with a server over communications network which can contains agents such as proxies, firewalls, routers, etc., as intermediate nodes", "RFC 791", "RFC 793", "RFC 2616", and "scanning a file, encrypting/decrypting processes, converting/translating communication protocols, file formats, and/or inserting advertising, at an intermediate node"* are well known and conventionally employed in the art. Therefore, it would have been obvious to consider such information described above by the applicant in the *"Description of the Related Art"* under the *"Background"* of the invention section as a "teaching" or "admitted prior art".

(C) Prior Art does not teach or suggest "one ore more messages containing said illusory content is sent for preventing a time out operation as a result of security processing".

As to point (C), **AAPA** teaches certain processes (*such as scanning a file requested by a client, encrypting/decrypting processes, or inserting advertising, etc.*) that may occur at an agent of an entity (*proxies 110 and 160 and/or firewalls 120 and 150*) communicating over a communication network can take a significant amount of time to complete while executing at a firewall (*encrypting/decrypting or scanning for virus as a result of security processing*) (**AAPA**, page 2, lines 13-19). Examiner also submits that these above processes, which are also well known and conventionally processed in the art at an intermediate node such as an ISP, proxy, gateway, or firewall.

*(For supporting examiner's reasoning that scanning a file, encrypting/decrypting processes, converting/translating communication protocols, file formats, and/or inserting advertising, at an intermediate node, are well known and conventionally employed in the art, examiner additionally submits that **Hair** (6,615,349) teaches a system for manipulating, encrypting a file or decrypting a file for electronic transmission between computing devices (**Hair**, C4:L63 - C5:L18) for the purpose of improved secure transmission of files over the Internet).*

In the related art, **Feldman** teaches an Integrated Switch Router "ISR" (*here ISR could be given a broad and reasonable interpretation as an agent*) sends one or more "VC KeepAlive" messages (*i.e., sending one or more messages containing illusory content*) to inform its neighbor (*read as a client*) of its continued existence. In order to prevent a neighbor timeout period from expiring (*i.e., determining if illusory content messages need to be sent*), ISR periodically sends or forwards the "VC KeepAlive" messages to neighbors for preventing the neighbor timeout period from expiring in the event when no other protocol messages have been transmitted (*i.e., when no response protocol messages have been sent to the client*) within the periodic interval time (**Feldman**, col. 7, lines 25-31).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teachings of **AAPA** and **Feldman** to send one or more messages containing said illusory content (*i.e., VC KeepAlive messages*) from an agent to a client for preventing a time out operation as a result of security processing.

In response to applicant's argument that "the Integrated Switch Router ISR of Feldman does not meet appellant's claim agent", examiner submits that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

(D) Prior Art does not teach or suggest, "determining if illusory content needs to be sent prior to sending said response".

As to point (D), **Feldman** teaches in order to prevent a neighbor (*client*) timeout period from expiring (*i.e., determining if illusory content messages need to be sent*), ISR (*agent*) periodically sends or forwards the "VC KeepAlive" messages to neighbors for preventing the neighbor timeout period from expiring in the event when no other protocol messages have been transmitted (*when no response protocol messages have been sent to the client, i.e., prior to sending said response*) within the periodic interval time (**Feldman**, col. 7, lines 25-31).

(E) Prior Art does not teach or suggest "creating a copy of said response; modifying said copy of said response by inserting an entity-header and transmitting said modified response said client".

As to point (E), see the rejection of claim 14 in paragraph 7 above and examiner also submits that the RFC 2616 is considered as a prior art.

(F) Prior Art, Kloth (6,598,034) is a non-analogous art.

As to point (F), In response to applicant's argument that **Kloth** (6,598,034) is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, **Kloth** discloses a system and method for processing data packets, wherein **Kloth** teaches HTTP is used to transfer displayable web pages and related files between computing devices over the Internet (*i.e.*, *the received response that client 130 receives from the server 140 could be web pages or related files*) (**Kloth**, col. 11, lines 1-5). Examiner also submits that clients receive responses from the server, wherein the received responses comprise a file, a document, or/and a computer program are also well known and conventionally processed/expected in the art of communications network.

(G) There must be some suggestion or motivation for combining the applied references (in issues #3-5, *i.e.*, claims 6-8, 9-10 and 11-12).

As to point (G), examiner believes the motivations given above for issues #3-5, *i.e.*, claims 6-8, 9-10 and 11-12 are sufficient (*see paragraphs 12, 16 and 18 above*). In

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addition, examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Quang N. Nguyen

July 26, 2004

Conferees



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